

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court’s order whether the case is or not approved for reporting)
(Chapter VIII Rule 32 (2) (b))

Description of the Case.

**IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL**

CRIMINAL APPEAL No. 2046 of 2001 (New)
CRIMINAL APPEAL No. 801 of 1989 (Old)

Aftab Alam alias Bhure **Appellant**

Versus

State of Uttaranchal **Opposite Party**

Approved for reporting.

~~Not approved for reporting.~~

Date of Decision 4th December, 2004.

Initial of Judge.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Reserved

CRIMINAL APPEAL NO.2046 OF 2001 (NEW)
CRIMINAL APPEAL NO.801 OF 1989 (OLD)

Aftab Alam alias Bhure
Son of Mahboob Alam
Resident of Line No. 12, Azadnagar,
Police Station Haldwani,
District Nainital

..... **Appellant**

Versus

State of Uttaranchal

..... **Opposite Party**

Sri J.C. Sharma, learned counsel for the Appellant.
Sri A. Rab for the Opposite Party.

Coram : Hon. P.C. Verma, J.
Hon. B.C. Kandpal, J.

Delivered by Hon'ble B.C. Kandpal, J

This criminal appeal arises out against the judgment and order dated 31.03.1989 passed by Sessions Judge, Nainital in Sessions Trial No. 108 of 1987 State Vs. Aftab Alam alias Bhure convicting the appellant under Section 302, Indian Penal Code and sentencing thereof for life imprisonment.

The prosecution version in brief is that Mumtaz Jahan daughter of the complainant Akil Ahmad had talking terms with the accused as Mumtaz Jahan used to reside with Shabiri Begum whose house was situated in Lane No.13, Azad Nagar, Haldwani and the accused also used to reside in front of house of Sabri Begum. The accused had some impression that Mumtaz Jahan had fallen in love

with him. Akil Ahmed when came to know about it, he initiated the talks for the marriage of Mumtaz Jahan and when this thing came in the knowledge of the accused, he threatened Akil Ahmed.

Meanwhile, Akil Ahmed settled the marriage of Mumtaz Jahan with Mohd. Sahab alias Sabbu S/o Munnan (the deceased). The marriage was solemnized in November, 1986, however, Mumtaz Jahan was not sent with the bride-groom on that occasion, as she was sent with bride-groom later on in November, 1987.

On 03.04.1987, Munnan, father of bridegroom came to Haldwani for extending invitation for Dawat-e-Waleema and after extending invitation to Akil Ahmed and others, Munnan went to the house of Smt. Shabri Begum where he stayed for sometime. Munnan, thereafter left the house of Smt. Shabri Begum in order to catch the bus for Bazpur. Munnan was accompanied by Smt. Shabri Begum and Sayeen who followed to see him off. Akil Ahmed was also going behind them. When these persons reached the Banjaran mosque in Lane No.4 at about 3:30 P.M., the accused/appellant came in front of Munnan and uttered that Munnan had committed mistake by getting his son married by Mumtaz Jahan. Munnan did not pay any heed and continued to step forward. Meanwhile, the accused fired at Munnan with a country-made pistol, which hit on the back of Munnan, who fell down on the ground. The accused ran-away towards lane No.1.

Injured Munnan was immediately shifted to Civil Hospital, Haldwani by Akil Ahmed and others and the Dr. R.P. Pandey (P.W.

5) medically examined him on 03.04.1987 at 4:00 P.M. The doctor found following injuries on the person on the person of Munnann:-

“Lacerated wound 8 cms x 5 cms x cavity deep on the back of left side chest with charring around, 10 cms below left shoulder profused bleeding present.”

The doctor was of the opinion that the patient was not in senses and his talks were incoherent. The doctor also opined that the injury was fresh and was possibly inflicted within 1 to 1,1/2 hours of the examination. The doctor was also of the view that the injury was caused by some firearm. The doctor admitted the patient and referred the case to Surgeon. The doctor also informed the Police through the Memo and advised for recording the dying declaration of the injured.

The First Information Report was scribed by Saleem Ahmed on the dictation of Akil Ahmad in the hospital. Saleem Ahmad reached the hospital after hearing of the occurrence. This scribed report was taken by Akil Ahmad to Police Station, Haldwani in order to lodge the same with the Police.

At the time of lodging the report by Akil Ahmad, the injured was alive, hence, the police registered the case against the accused u/s 307 I.P.C. and started the investigation.

The injured Munnann expired at 4:40 P.M. i.e. soon after the doctor sent the Memo for recording his dying declaration. Therefore, the doctor immediately sent another Memo to the police informing his death.

The police after receiving the intimation from the Hospital Authorities about the death, entered the same vide G.D. entry No. 50/17.17 P.M. The inquest on the body of the deceased was conducted by the Investigating Officer and thereafter the body was sent for post-mortem examination, which was ultimately performed by Dr. S.C.S. Koranga (P.W. 2) on 04.04.1987 at 11:30 A.M.

The Investigating Officer inspected the spot, recorded the statement of all the witnesses, prepared the site plan and ultimately after completing the investigation submitted the charge sheet against the accused on 15.04.1987.

After the submission of the charge sheet, the accused was committed to the Court of Session and learned session judge on 04.11.1987 framed the charge under Section 302, Indian Penal Code against the accused/appellant. The accused denied the charge levelled against him and claimed his trial.

The prosecution, in order to support its version, examined P.W. 1 Akil Ahmed (informant), P.W. 2 Dr. S.C.S. Koranga (conducting post-mortem), P.W. 3 Sabri Begum (eye witness), P.W. 4 Saddique Hussain (witness of the inquest), P.W. 5 Dr. R.P. Pandey (medical examination report), P.W. 6 Constable Shiv Kumar Sharma and P.W. 7 Inspection Babu Ram Yadav (Investigating Officer).

After the evidence of the prosecution was over, the statement of the accused was recorded under Section 13 Cr.P.C. The accused did not adduce in evidence in his defence.

We have heard the learned counsel for the appellant and learned A.G.A. as well and perused the record.

It has been contended by the learned counsel for the appellant that the motive in the present case as has been assigned to the appellant/accused has not been established.

We fail to appreciate this argument. It is evident from the evidence of Akil Ahmad P.W. 1 who is informant of this case that his daughter Mumtaz Jahan was married to one Mohd. Shoab son of Munnan the deceased. This witness has stated that he knew the accused Aftab Alam alias Bhure since before the occurrence as he was the resident of Line No. 12 Azad Nagar, Haldwani. He also added that Aftab Alam was living in front of the house of the Smt. Shabari Begum who is wife of the Akil Ahmad's elder brother. He has further stated that the accused/appellant Aftab Alam and Mumtaz Jahan were on taking term since they live in the house facing each other but when Akil Ahmad settled the marriage of Mumtaz Jahan with Mohd. Shoab, the accused/appellant had extended threat to him that in case if he did not marry Mumtaz Jahan with him, he will kill Akil Ahmad. This witness has further deposed that marriage of Mumtaz Jahan was solemnized with Mohd. Shoab on 15.11.1986 but she was not sent with Mohd. Shoab at the time of marriage as she was sent to Mohd. Shoab later on 01.04.1987. Akil Ahmed further stated that on 03.04.1987 Munnan father of the Mumtaz Jahan came to Haldwani for extending the invitation in connection with Dawat-e-wallema. Munnan, deceased came to his house as well as house of

Smt. Sabari Begum and thereafter he left the house of Smt. Sabari Begum on way to Bazpur bus stand Haldwani. The accused Aftab Alam came in front of Munnan and asked him that it was not good of him to marry his son with Mumtaz Jahan. He was further stated that Smt. Shabari Begum and Smt. Saheen also accompanying Munnan and he was also following them in order to see Munnan off to bus stand. This witness further deposed that when Aftab Alam was talking to Munnan, Munnan did not pay any heed and continue walking ahead. Then the accused took out country made pistol and fired from behind.

The defence before the court below has also admitted that the accused Aftab Alam developed some intimacy with Mumtaz Jahan, hence there is no reason to disbelieve Aftab Alam who has stated that Aftab Alam once threatened him with dire consequences in case if he did not marry his daughter Mumtaz Jahan with him. Therefore, the motive as assigned by the prosecution to the accused Aftab Alam for committing this crime, is fully established.

The evidence on record shows that the F.I.R. is quite prompt. The incident is alleged to have taken place on 03.04.1987 at 3:30 P.M. near Lane No. 4 mosque Banjaran and the first information report was lodged at the police station Haldwani on 03.04.1987 at 4:25 P.M. The distance of the police station from the place of the occurrence is about one kilometer. It has been explained by P.W. 1 Akil Ahmad that immediately after Munnan was shot by the accused he and one Riyaz Ahmad took Munnan to the hospital and from

there he alongwith Saleem Ahmad went to the Tahsil in order to get report scribed and Saleem Ahmad scribed the report. Thereafter, he lodged the report Ex. Ka. 1 at police station. This witness has deposed that after reaching the police station he again reached the hospital but Munnan was already dead. The G.D. Ex.Ka.7 shows that the written report was lodged by Akil Ahmad which was scribed by one Saleem Ahmad at police station on 03.04.1987 at 16:25 hours u/s 307 I.P.C. The another GD Ex. Ka. 8 shows that the police station received the information with regard to the fact that the dying declaration of the injured be recorded and the arrangement in this connection should be made. Another GD Ex. Ka.9 shows that at 5:15 P.M. the police station received the information that the injured Munnan died at 4:40 P.M and the case converted u/s 302 IPC. This sequence shows that the dying declaration of the deceased could not be recorded meanwhile. The sequence also corroborates the testimony of P.W. 1 who says that immediately after the registration of the case at police station when he reached the hospital he found that Munnan was already dead.

Therefore, under the aforesaid circumstance we find that the First Information Report is quite prompt and there was no chance available to the informant for manipulating a cock bull story against the accused/appellant.

Learned counsel for the defence has further argued that the spot of the occurrence has not been fixed by the prosecution as both the witnesses have consistently deposed that the occurrence took

place in the mosque when they were proceeding towards the lane No.

1. It has been submitted that the place of the occurrence is shown near Lane no. 3 wherein it has been mentioned at lane No. 4. It is also submitted that Smt. Sabari Begum has deposed that this assault was made in between the mosque and Kothari of Maulvi Iqram.

It is to be noted that site plan Ex. Ka. 15 prepared by investigation officer shows that lane No. 3 run from north to south. On the back side of the north and the terrace of it passes in between mosque and Kothari of Maulvi Iqram as well.

It may be possible that Akil Ahmad did not have any clear idea as to specific lane No. when he lodged the F.I.R. as the F.I.R. was obviously prepared under extraordinary circumstances when a close relation of Akil Ahmad had been fatally wounded and shifted to hospital hence under these circumstances the aforesaid factor suggesting the shifting of the site of the occurrence cannot be attached much weight and the prosecution case is not going to suffer on this count alone.

Learned counsel for the defence has further argued that Akil Ahmad P.W. 1 was not actually present at the time of the assault and this argument is based on sole circumstances that Akil Ahmad has not mentioned in so many words in F.I.R. prepared at his dictation that he too was present and had seen the occurrence or that he too escorted the injured Munnan.

We fail to appreciate the arguments as Akil Ahmad had clearly stated in his testimony that when Munnan left the house of

Smt. Sabari Begum then Smt. Sabari Begum and Smt. Saheen had accompanied him to see Munnar off and Akil Ahmad was also following them. This witness has stated that as soon as he reached near mosque Banjaran the occurrence took place. This witness has further stated that he along with Riaz Ahmad took Munnar in a seriously injured condition to the hospital where he left Munnar and immediately he ran to Thana in order to get F.I.R. scribed and after the F.I.R. was reduced in writing, he lodged same at police station.

The F.I.R. could be lodged by Akil Ahmad in less than one hour's time after the occurrence. Therefore, this circumstance alone shows that Akil Ahmad was more concerned about the reporting of the case as well as about the life of Munnar injured. The testimony of Akil Ahmad P.W. 1 remains unshaken and the F.I.R. i.e. Ex. Ka. 1 did not exclude the presence of Akil Ahmad at the time of the occurrence. The F.I.R. is not supposed to be the encyclopedia of the entire narration of the facts. The presence of Akil Ahmad at the time of the occurrence is corroborated by the evidence of P.W. 3 Sabari Begum who has stated in her deposition that she along with Saheen and Akil Ahmad had been going to see Munnar off to bus stand and at about 3:30 P.M. when they reached near mosque Banjaran then Akil Ahmad reached over there & started talking to Munnar that he had not done good by marrying his son with Mumtaz Jahan. She has further deposed that Munnar did not pay any heed and continued to step ahead. She has further deposed that the accused took out his countrymade pistol and fired at the back of Munnar which hit him.

Thereafter the accused made his escape good. This witness has further stated that Akil Ahmad and Riaz Ahmad took Munnan to the hospital. She along with Saheen also reached the hospital later on and from the hospital Akil Ahmad went to the police station for lodging the report. The presence of Akil Ahmad P.W. 1 at the time of the occurrence cannot be doubted in view of the evidence of P.W.2.

Learned counsel for the appellant has also tried to suggest that the injured was taken to the hospital only by Riaz Ahmad and there is no entry in the medical report that the injured was actually brought to the hospital by Akil Ahmad which is further doubting the presence of Akil Ahmad at the spot.

We do not find any force in this argument.

It is true that the medical report shows that the injured was brought by Riaz Ahmad to the hospital but the close scrutiny indicates that the testimony of Akil Ahmad as well as Sabari Begum that it was Akil Ahmad and Riaz Ahmad who shifted Munnan to hospital in rikshaw and testimony of the eyewitness has again gone unchallenged in the cross examination.

The ocular version advanced by the prosecution in the present case is fully corroborated with the medical evidence. The eyewitnesses have stated that the accused shot at Munnan from behind and the post mortem report shows one lacerated wound below the left shoulder joint on left side of back of the chest. Therefore, the seat of injury as has been indicated in the medical evidence finds full

and complete corroboration with the ocular version and we do not find reason to disbelieve the ocular version specially when it is fully corroborated by the medical version.

The occurrence took place in broad day light at about 3:30 P.M. in Mohalla of the city. The deceased was going to Bajpur bus stand from the house of Smt. Sabari Begum. He was followed by Sabari Begum as well as Akil Ahmad who went to see him off to the bus stand. Unshaken testimony of these two witnesses show that Mumtaz Jahan was married to the son of Munnar and for this purpose he had gone to Haldwani for extending the invitation. But there is nothing unusual or unnatural in the prosecution case. The eyewitnesses have given a detailed and cogent explanation with regard to the manner of incidence as well as the grudge on account of which the accused committed aforesaid gruesome murder of Munnar.

Upon the evidence discussed above, the prosecution has successfully proved the charge leveled against the accused/appellant beyond any shadow of doubt. We are of the opinion that the impugned judgment and order passed by the court below convicting and sentencing the accused/appellant needs no interference.

The appeal is accordingly dismissed.

The judgment and order convicting and sentencing the appellant is hereby confirmed.

Record of the court below be returned back immediately.

Concerned CJM is directed to take proper step to take the
appellant in custody.

(B.C. Kandpal, J)

(P.C. Verma, J)

December 04, 2004
Shiv